

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 LANCE REBERGER,

Case No. 3:17-cv-00552-RCJ-WGC

4 Plaintiff,

ORDER

5 v.

6 JAMES DZURENDA et al.,

7 Defendants.

8 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
9 a state prisoner. On November 9, 2018, this Court issued an order denying Plaintiff's
10 application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to
11 28 U.S.C. § 1915(g). (ECF No. 5). The Court informed Plaintiff that if he did not pay the
12 \$400.00 filing fee in full within 28 days of the date of that order, the Court would dismiss
13 the action without prejudice. (*Id.*) The 28-day period has now expired and Plaintiff has
14 not paid the full filing fee of \$400.00.

15 District courts have the inherent power to control their dockets and "[i]n the
16 exercise of that power, they may impose sanctions including, where appropriate . . .
17 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
18 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
19 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
20 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
21 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
22 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
23 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
24 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
25 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
26 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
27 failure to comply with local rules).

1 In determining whether to dismiss an action for lack of prosecution, failure to obey
2 a court order, or failure to comply with local rules, the court must consider several factors:
3 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
4 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
5 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
6 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
7 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

8 In the instant case, the Court finds that the first two factors, the public's interest in
9 expeditiously resolving this litigation and the Court's interest in managing the docket,
10 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
11 in favor of dismissal, since a presumption of injury arises from the occurrence of
12 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
13 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
14 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
15 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
16 the court's order will result in dismissal satisfies the "consideration of alternatives"
17 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
18 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing fee within 28 days
19 expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not pay the \$350 filing
20 fee and \$50 administrative fee in full within twenty-eight (28) days of this Order, the Court
21 may dismiss the action without prejudice without further notice." (ECF No. 5). Thus,
22 Plaintiff had adequate warning that dismissal would result from his noncompliance with
23 the Court's order to pay the full filing fee within 28 days.

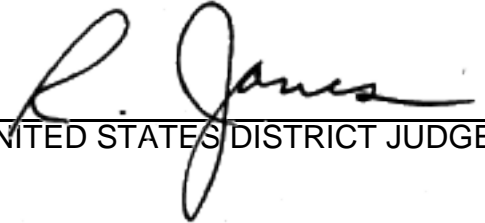
24 It is therefore ordered that this action is dismissed without prejudice based on
25 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's November 9,
26 2018, order.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It is further ordered that the Clerk of Court shall close the case and enter judgment accordingly.

Dated this 14th day of January, 2019.


UNITED STATES DISTRICT JUDGE